

**UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO**

COMMONWEALTH OF PUERTO RICO,  
through its Attorney General,

Plaintiff,

v.

EXXON MOBIL CORPORATION; BP P.L.C.;  
CHEVRON CORPORATION; CHEVRON  
PHILLIPS CHEMICAL PUERTO RICO  
CORE, LLC; CONOCOPHILLIPS; SHELL  
PLC; STATION MANAGERS OF PUERTO  
RICO, INC.; TOTALENERGIES; and  
TOTALENERGIES MARKETING PR CORP.,

Defendants.

Civil Action No. 3:24-cv-01393

Hon. Aida M. Delgado-Colon

**DEFENDANTS' SECOND NOTICE OF SUPPLEMENTAL AUTHORITY IN  
OPPOSITION TO PLAINTIFF'S MOTION TO REMAND**

TO THE HONORABLE COURT:

Defendants respectfully submit as supplemental authority a recent decision by the Fourth Circuit reversing remand in two cases removed under the federal officer removal statute. *See Maryland v. 3M Co.*, --- F.4th ----, 2025 WL 727831 (4th Cir. Mar. 7, 2025) (attached hereto as Exhibit "1" for the Court's convenience). The decision reinforces the breadth of the federal officer removal statute and this Court's obligation to defer to Defendants' "theory of the case," and makes clear that Plaintiff's disclaimer is not an effective bar to removal pursuant to § 1442(a)(1).

In *Maryland*, the states of Maryland and South Carolina each brought two different suits relating to alleged contamination by per- and polyfluoroalkyl substances ("PFAS") produced by defendant 3M: one suit relating to PFAS production for aqueous film-forming foam ("AFFF"), a firefighting foam manufactured in part for the U.S. military, and one suit for PFAS production

*excluding* AFFF. *Maryland*, 2025 WL 727831, at \*2. Similar to Plaintiff’s allegations here, plaintiffs alleged that 3M had “concealed [the] dangers” of its products and “misled the public” about those dangers. Compl. ¶ 4, *Maryland v. 3M Co.*, No. 1:23-cv-01836 (D. Md. July 10, 2023); Compl. ¶ 7, *South Carolina v. 3M Co.*, No. 2:23-cv-05979 (D.S.C. Nov. 21, 2023). 3M removed the non-AFFF suits under the federal officer removal statute, on the ground that PFAS at issue in those suits “indistinguishably commingled” with PFAS at issue in the AFFF suits (including AFFF produced for the military). *Maryland*, 2025 WL 727831, at \*2. The district courts remanded, citing the plaintiffs’ disclaimers of AFFF liability in their non-AFFF suits. After consolidating the appeals for review, the Fourth Circuit reversed.

Relying on *Government of Puerto Rico v. Express Scripts*, 119 F.4th 174 (1st Cir. 2024), *Baker v. Atlantic Richfield Co.*, 962 F.3d 937 (7th Cir. 2020), and other cases, the Fourth Circuit emphasized that, given the “broad scope” of federal officer removal, “a plaintiff in the § 1442(a)(1) removal context is *no longer the master of its complaint*,” and so the plaintiffs’ disclaimers could not be “dispositive.” *Maryland*, 2025 WL 727831, at \*4, \*5 (emphasis added). To the contrary, it had to “credit a removing defendant’s theory of the case as to whether the conduct with which it has been charged is related to its federal work.” *Id.* at \*5. Doing so, the court could not “blindly accept” the plaintiffs’ theory of the case. *Id.* The plaintiffs’ attempt to exclude 3M’s production and sale of military AFFF through “artful pleading [did] not trump 3M’s theory for removal,” and because “3M ha[d] plausibly alleged that the PFAS intermingled to the point that it [was] impossible to identify their source,” the relatedness prong of the federal officer removal analysis was satisfied. *Id.* at \*6, 7. “In sum,” the Fourth Circuit held that “3M’s Military AFFF production [was] inextricably related to the States’ general allegations of PFAS contamination, notwithstanding their attempts to draw a line between 3M’s federal and non-federal work.” *Id.* at \*8.

*Maryland* offers clear guidance for this case. As in *Maryland*, Defendants here have plausibly advanced a theory of the case (consistent with Plaintiff’s own allegations in the Complaint, *e.g.*, Compl. ¶ 22) that greenhouse gas emissions from governmental and private sources are inseparable, and this Court must credit that theory, notwithstanding Plaintiff’s disclaimer. Here, Plaintiff’s suit seeks damages for harms allegedly caused by greenhouse gas emissions. Both Plaintiff’s own allegations and Defendants’ theory of removal reflect that these emissions are the result of numerous sources—including U.S. government and military users—that are “indistinguishably commingled” in the atmosphere. *Maryland*, 2025 WL 727831, at \*2; *see, e.g.*, NOR ¶¶ 3–4, 11–12, 21, 147–49, 151–52; Compl. ¶¶ 15–27. Because some of the emissions-causing oil and gas products were produced and distributed under federal control, federal officer removal is proper. Plaintiff’s “artful pleading” cannot “trump [Defendants’] theory of removal,” which the Court must credit. *Maryland*, 2025 WL 727831, at \*6. And Plaintiff’s disclaimer—which artificially “attempts to draw a line between [Defendants’] federal and non-federal work”—does not change the outcome. *Id.* at \*8.

Notably, and contrary to Plaintiff’s suggestions, *see* Mot. at 3–5, courts must credit *Defendants’* theory of how their conduct is related to Plaintiff’s claims and alleged injuries. As the *Maryland* court explained: “In considering whether the relevant conduct relates to a contractor’s federal work, we credit *Defendants’* theory of the case when determining whether there is such a connection or association.” 2025 WL 727831, at \*4 (cleaned up). And, critically, in reaching this conclusion, the *Maryland* court expressly relied on the First Circuit’s decision in *Express Scripts*, emphasizing that “[a]s our sister circuits agree, ‘[a] disclaimer that requires a state court to determine the nexus ‘between the charged conduct and federal authority’ is not a valid means of precluding removal.’” *Id.* at \*5 (quoting *Express Scripts*, 119 F.4th at 188).

Defendants properly removed under the federal officer statute because a substantial portion of the emissions forming the basis for Plaintiff's claims were the result of oil and gas production and distribution carried out under federal control. *Maryland* joins the First Circuit's decision in *Express Scripts* and other cases in making clear that remand should be denied.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 20th day of March 2025.

**CERTIFICATE OF SERVICE:** I, Roberto C. Quiñones-Rivera, certify that, on the above date, I filed this document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record registered in the system.

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